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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: McClung, G.L. III

§

Serial No: 09/375,451

§ Art Unit: 3622

§

Filed: 08/17/99

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§ Examiner: Alvarez, Raquel

§

For: Improvements To Business System

§ Atty Docket No: GLM III

**Appeal Brief Cover Letter**

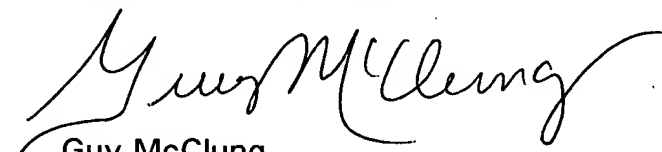
Commissioner For Patents  
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Dear Sir:

Submitted herewith in triplicate is the Appeal Brief [20 pages] in the above-identified case and Check No. 4302 for \$160 for the required fee under 37 CFR 1.17(c).

Respectfully submitted,

  
Guy McClung  
Reg. No. 29,008

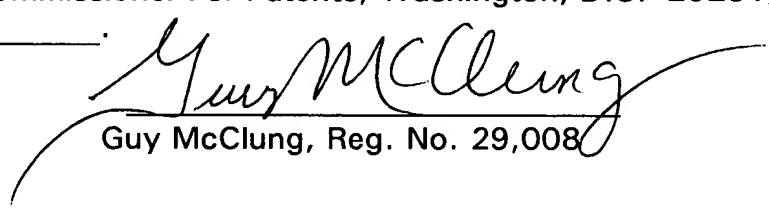
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Guy McClung, Reg. No. 29,008



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*#32/appeal*  
*10.21.02* *(3)*

IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

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APPEAL BRIEF

10/01/2002 AWONDAF1 00000081 09375451

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APPLICANT: Guy L. McClung, III; Reg. No. 29,008  
SERIAL NO.: 09/375,451  
FILED: 08/17/1999  
FOR: IMPROVEMENTS TO BUSINESS SYSTEM  
ART UNIT: 3622

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TABLE OF CASES AND AUTHORITIES

In Re Mills

U.S. Court of Appeals For The Federal Circuit  
916 F.2d 680; 16 USPQ2d 1430 (1990)

Ex Parte Porter

Board of Patent Appeals & Interferences  
25 USPQ 2d 1144, 1147 (1992)

In Re Fine

U.S. Court of Appeals For The Federal Circuit  
837 F.2d 1071, 5 USPQ 2d 1596 (1988)

### STATUS OF CLAIMS

Originally, claims 1 - 20 were presented in this application and were cancelled in a Preliminary Amendment that presented new claims 21 - 37. Claims 21 - 37 were rejected by the Examiner and then canceled by Applicant and new claims 38 - 54 were presented. Claims 38 - 54 have been finally rejected and are the claims appealed here. A copy of these claims is attached in the Appendix.

### STATUS OF AMENDMENTS

After final rejection of claims 38 - 54, Applicant filed a Response To Office Action Mailed 6/28/2002 that presented no new claims. In an Advisory Action mailed 8/14/2002 the Examiner maintained the rejection of claims 38 - 54. Applicant then filed a Response To Office Action Mailed 6/28/2002 & To Advisory Action Mailed 08/14/2002 which again presented no new claims. The Examiner maintained the final rejection of the claims in an Advisory Action Mailed 08/26/2002.

### SUMMARY OF THE INVENTION

A method is claimed for guaranteeing a best price to a consumer following purchase of an item in a final consummated sale of the item at a first price and providing a refund by crediting an account of the consumer if a later price is better than the

first price. The method includes: recording the first price and information identifying the consumer; monitoring the sales price of the item for a predetermined time period after purchase of the item by the consumer in the consummated final first transaction; noting any price lower than the first price for the item during the predetermined time period following the purchase of the item; calculating a money-value difference between the first price and any price lower than the first price; and refunding to the consumer an amount equal to the money-value difference. The item is purchased via a host system and the host system records the first price and information identifying the customer; the host system conducts the monitoring, noting, and calculating steps; and the host system provides the refund to the consumer by crediting an account of the consumer (See, e.g. Specification p. 2. lines 29 - 33; p. 3, lines 1 - 16; p. 6, line 2; p. 7, lines 25 - 34; p. 8, lines 1- 11; p. 9, lines 7 - 20; and Drawing Figs. 1 and 2). In one particular embodiment the consumer receives a refund for each subsequent sales price lower than the first price. (See, e.g., Specification p. 8, lines 13 - 15).

#### ISSUES

1. Whether claims 38 - 40, 43 - 50, 52 and 54 are unpatentable under 35 U.S.C. §102 over Walker et al (U.S. 6,249,772).

2. Whether claims 41, 42, 51 and 53 are unpatentable under 35 U.S.C. §103(a) over Walker et al (U.S. 6,249,772).

#### GROUPING OF CLAIMS

1st Group of Claims: Claims 38 - 40, 43 - 50, 52, 54

2nd Group of Claims: Claims 41, 42, 51, 53

The rejected claims do not stand or fall together and reasons for this are presented in the Argument section below.

#### ARGUMENT

This is a simple case. The Applicant believes the Examiner has failed to make a correct factual interpretation of the single U.S. Patent reference (Walker et al, U.S. Patent 6,249,772, henceforth "the Walker reference") cited against the claims. Applicant respectfully submits that the Walker reference neither anticipates nor renders obvious what is claimed by Applicant.

Independent claims 38 and 47 are illustrative of the broadest claims on appeal:

38. A method for guaranteeing a consumer a best price on an item purchased from a vendor in a consummated final first transaction at a first price, the method comprising  
recording the first price and information  
identifying the consumer,

monitoring the sales price of the item for a predetermined time period after purchase of the item by the consumer in the consummated final first transaction,

noting any price lower than the first price for the item during the predetermined time period following the purchase of the item,

calculating a money-value difference between the first price and said any price lower than the first price, and

refunding to the consumer an amount equal to the money-value difference,

wherein the item is purchased via a host system and the host system records the first price and information identifying the customer; the host system conducts the monitoring, noting, and calculating steps; and the host system provides the refund to the consumer, and

wherein the host system provides the refund by crediting an account of the consumer.

47. A business system for guaranteeing a consumer a best price on an item purchased from a vendor in a consummated final first transaction at a first price, the system comprising

means for recording the first price and information identifying the consumer,

means for monitoring the sales price of the item for a predetermined time period after purchase of the item by the consumer in the consummated final first transaction,



means for noting any price lower than the first price for the item during the predetermined time period following the purchase of the item,

means for calculating a money-value difference between the first price and said any price lower than the first price, and

means for refunding to an account of the consumer an amount equal to the money-value difference.

#### FACTUAL MISINTERPRETATION OF ART

The Examiner is required to provide a proper factual basis for reaching conclusions of anticipation and of obviousness. In Re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); Ex Parte Porter, 25 USPQ 2d 1144,1147 (Board of Patent Appeals & Interferences), citing In Re Fine, 837 F. 2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988).

In this case Applicant believes the Examiner has incorrectly interpreted the Walker reference.

The system and method claimed by Applicant is directed to a situation in which, following a final consummated sale of an item purchased by a consumer, prices that come into effect after the sale are monitored. Then, if a lower price goes into effect, an account of the consumer is credited with a refund amount equal to the difference between the price originally paid and the subsequent (in time) lower price. The Specification in many places refers to

prices that ensue temporally and are monitored; and to the fact that the prices that may trigger a refund are in a "future time period" (See, e.g. the reference to "future time period" at p. 6, line 2).

The Walker reference is not directed to future-time post-sale prices that may go into effect for an item previously purchased by a consumer. Nothing in the Walker reference deals with or suggests a subsequent (in time) price that may go into effect for a purchased item. Nothing in Walker deals with or suggests charging a consumer a later lower price.

In Walker, two prices are of concern — a pre-sale-consummation "established price" and an at-the-time-of-sale "store price." Neither of these prices is a price that comes into existence following the consummation of a purchase.

The rejections of the claims focus on text in the Walker reference that deals with an established price that is less than a store price in a situation in which the customer is charged the **higher** store price:

Additionally, rather than charging the customer the established price in real time, the difference between a store price and the established price could be made to appear as either a rebate on the customer's credit card bill or as a check that the central controller mails or otherwise delivers to the customer.

In such a case, the central controller would post the purchase price, the store ID, and the customer's credit card number with the credit card processor and, in particular, in the credit card processor's reservation database (Fig. 7). When a transaction is made that matches a record in the reservation database of the credit card processor, the central controller could bill the store for the difference in price and possibly charge a transaction fee to either the customer's account or the store's account, and thereafter credit the difference to the customer and indicate the same on the customer's bill. (Walker, Col. 22, lines 18 -33)

Walker is directed to systems for providing a manufacturer control over retail pricing. Walker has nothing to do with checking the sales price of an item after a sale to provide a consumer a better, lower price. Walker has no teaching or suggestion regarding monitoring sales prices; monitoring sales prices for a predetermined time period after a sale is finalized; or for noting any price lower than a price paid.

Walker is directed only to the situation in which the pre-set "established price" is less than the "store price." Walker does not envision the situation in which the store price is less than the

established price. Whether in Walker at the time the sale is made the customer is charged the store price or the established price, there is no teaching or suggestion to monitor sales prices after the sale is finalized. Put another way, Walker could not claim what is now claimed herein — there would be no support in Walker for such claims.

All of the claims on appeal deal with a situation that involves a time period following a sale; "monitoring the sales price of the item for a predetermined time period after purchase of the item" (Claim 38); "means for monitoring the sales price of the item for a predetermined time period after purchase of the item" (Claims 47 and 54); and "means for noting any price lower than the first price for the item during the predetermined time period following the purchase of the item" (Claim 47) [emphasis added]. The Walker reference deals only with "real time" up to the time of a sale regarding prices that may be in effect at the time of a sale.

The Walker reference refers to ". . . and thereafter credit the difference to the customer and indicate the same on the customer's bill (Walker, Col. 22, lines 31 - 33). The "thereafter" in this text from the Walker reference does not refer to future prices that go into effect after a sale is finalized, but only to a later time at which a credit may be provided to a customer with respect to an "established price" established before the sale and applicable at the time of the sale.

The Examiner cites no other art for a teaching or suggestion of monitoring temporally subsequent price(s) and refunding price differences by crediting a consumer's account as included in the systems and methods Applicant claims herein.

Applicant contends, therefore, that there is no proper factual basis for rejection of any of the claims on appeal for anticipation (or for obviousness as discussed below).

#### DEPENDENT CLAIMS AND §103 REJECTIONS

Dependent claims 41, 42, 51 and 53 were rejected under §103(a) as being unpatentable over the Walker reference [discussed above with respect to the rejection of claims under §102(b)]. These claims are as follows.

41. The method of claim 38 wherein the account is an account of the consumer with the host system.

42. The method of claim 38 wherein a refund is made for each subsequent sales price lower than the first price.

51. The business system of claim 47 further comprising  
means for duplicating for the consumer any incentive accompanying sales of the item after the consummated final first transaction during the predetermined time period.

53. The business system of claim 47 further comprising  
means for providing a warranty to the consumer.

Applicant repeats here the deficiencies of the Walker reference discussed above.

Claim 42 deals with the possibility of a plurality of subsequent (in time) prices that are lower than a purchase price. The rejection of Claim 42 is as follows:

Claim 42 further recites that a refund is made for each subsequent sales price lower than the first price. Since, Walker teaches guaranteeing a consumer the best prices then it would have been obvious to a person of ordinary skill in the art to refund the consumers for each subsequent sales price lower than the first price because such a modification would allow the customer to get the lowest price each time the product is purchased.

As argued above, Applicant disagrees with the Examiner's characterization of Walker as "guaranteeing a consumer the best prices." Walker does not deal with "established prices" in the plural. Walker deals only with a single "established price" and a single at-the-time-of-purchase "store price." Walker has no teaching or suggestion of allowing a consumer to "establish" multiple "established" prices or to take advantage of multiple "store prices"; and no teaching or suggestion regarding any subsequent "store price" or "store prices" that go into effect at a time after the "real time" time of the purchase.

Claim 51 deals with providing a consumer the benefit of any later incentive that goes into effect related to the purchase of an item. The rejection of Claim 51 is as follows:

Claim 51 further recites duplicating any incentive accompanying sales of the item after the first transaction. Official notice is taken that is old and well known to duplicate an incentive of the item after an item has been purchased in order to further motivate customers to purchase the item. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included duplicating any incentive accompanying sales of the item after the transaction for the above mentioned advantages.

Applicant again focuses on the "after" sale aspects of what is claimed herein and asserts that even if it is known to duplicate incentives, in the context of the Walker reference it is not obvious to include after-sale incentive duplication since Walker has no teaching or suggestion regarding any price or any incentive that goes into effect after a sale is completed.

Claim 53 deals with providing a warranty to a customer. Applicant submits that Claim 53 stands or falls with independent claim 47 (which, as argued above, Applicant submits defines patentable subject matter).

CONCLUSION

Applicant submits that what is now claimed herein is not anticipated by the Walker reference and is not obvious in view of this reference.

For the reasons discussed in detail above, Applicant respectfully submits that the Examiner's action should be reversed and the pending claims should be allowed.

Respectfully submitted,

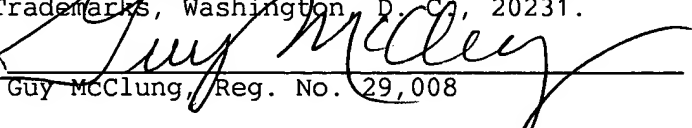


Guy McClung - Applicant  
Registration No: 29,008

Date: 27 SEP 02

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Guy McClung, Reg. No. 29,008



#### APPENDIX

The claims on appeal, claims 38 - 54, were presented in Applicant's RESPONSE TO OFFICE ACTION MAILED 3/1/02. A copy of the claims 38 - 54 from pages of this Response is attached.

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: McClung, G.L. III	§	
	§	Art Unit: 2761
Serial No: 09/375,451	§	
	§	Examiner:
Filed: 08/17/99	§	
	§	Atty Docket No: GLM III
For: Improvements To	§	
Business System	§	

**RESPONSE TO OFFICE ACTION MAILED 3/1/02**

Assistant Commissioner For Patents  
Washington, D.C. 20231

Dear Sir:

This is a Response to the Office Action Mailed 3/1/02. Without abandoning any invention or waiving any rights, please enter the amendments that follow.

Please cancel claims 21 - 37 and enter new claims 38 - 54:

1        38. A method for guaranteeing a consumer a best price on an  
2 item purchased from a vendor in a consummated final first  
3 transaction at a first price, the method comprising  
4                recording the first price and information  
5                identifying the consumer,  
6                monitoring the sales price of the item for a  
7 predetermined time period after purchase of the item by the  
8 consumer in the consummated final first transaction,  
9                noting any price lower than the first price for the  
10 item during the predetermined time period following the  
11 purchase of the item,  
12                calculating a money-value difference between the  
13 first price and said any price lower than the first price, and  
14                refunding to the consumer an amount equal to the  
15 money-value difference,

16                wherein the item is purchased via a host system and  
17                the host system records the first price and information  
18                identifying the customer; the host system conducts the  
19                monitoring, noting, and calculating steps; and the host system  
20                provides the refund to the consumer, and

21                wherein the host system provides the refund by  
22                crediting an account of the consumer.

1                39. The method of claim 38 wherein the item is purchased by  
2                the consumer at a location of the vendor.

1                40. The method of claim 38 wherein the item is purchased by  
2                the consumer on-line via a network system.

1                41. The method of claim 38 wherein the account is an account  
2                of the consumer with the host system.

1                42. The method of claim 38 wherein a refund is made for each  
2                subsequent sales price lower than the first price.

1                43. The method of claim 38 further comprising

2                monitoring sales of the item during the  
3                predetermined time period for any incentive provided to  
4                consumers purchasing the item following the consummated final  
5                first transaction, and

6                providing the consumer involved in the consummated  
7                final first transaction with a refund based on a money value  
8                of said incentive.

1                44. The method of claim 38 further comprising

2                monitoring sales of the item during the  
3                predetermined time period for any incentive provided to  
4                consumers purchasing the item following the consummated final  
5                first transaction, and

6                providing the consumer involved in the consummated  
7                final first transaction with a refund based on a money value  
8                with said incentive.

1                45. The method of claim 38 wherein only prices for the item  
2                to be sold by the vendor involved in the first transaction are  
3                taken into account in the noting step.

1        46. The method of claim 38 wherein only prices for the item  
2 for sale in a pertinent geographic area are taken into account in  
3 the noting step.

1        47. A business system for guaranteeing a consumer a best  
2 price on an item purchased from a vendor in a consummated final  
3 first transaction at a first price, the system comprising

4                means for recording the first price and information  
5 identifying the consumer,

6                means for monitoring the sales price of the item for  
7 a predetermined time period after purchase of the item by the  
8 consumer in the consummated final first transaction,

9                means for noting any price lower than the first  
10 price for the item during the predetermined time period  
11 following the purchase of the item,

12                means for calculating a money-value difference  
13 between the first price and said any price lower than the  
14 first price, and

15                means for refunding to an account of the consumer an  
16 amount equal to the money-value difference.

1        48. The business system of claim 47 further comprising

2                a host system that includes the means for recording,  
3 means for monitoring, means for noting, and means for  
4 calculating.

1        49. The business system of claim 48 further comprising

2                the host system also including the means for  
3 refunding.

1        50. The business system of claim 47 wherein the consumer  
2 conducts the consummated final first transaction with the vendor  
3 via the host system.

1        51. The business system of claim 47 further comprising

2                means for duplicating for the consumer any incentive  
3 accompanying sales of the item after the consummated final  
4 first transaction during the predetermined time period.

1        52. The business system of claim 47 further comprising

2 means for determining a pertinent geographic area  
3 for the consummated final first transaction and for limiting  
4 the monitoring step to sales prices available within the  
5 pertinent geographic area.

1 53. The business system of claim 47 further comprising  
2 means for providing a warranty to the consumer.

1 54. In a business system with a magnetic strip card with  
2 consumer identifying information encoded thereon said information  
3 identifying a consumer desiring to conduct a transaction with a  
4 vendor, a host system that maintains information about discounts  
5 from said vendor, an apparatus for reading information on the  
6 magnetic strip card, said apparatus interconnected with and in  
7 communication with the host system, and means for applying any  
8 applicable discount related to said transaction for the benefit of  
9 said consumer, the improvement comprising

10 means for guaranteeing a consumer a best price on an  
11 item purchased from the vendor in a consummated final first  
12 transaction at a first price, said means further comprising

13 means for recording the first price and information  
14 identifying the consumer,

15 means for monitoring the sales price of the item for  
16 a predetermined time period after the purchase of the item by  
17 the consumer in the consummated final first transaction,

18 means for noting any price lower than the first  
19 price for the item during the predetermined time period,

20 means for calculating a money-value difference  
21 between the first price and said any price lower than the  
22 first price, and

23 means for refunding to an account of the consumer an  
24 amount equal to the money-value difference.